Indians such power has not been questioned. N. Y. Cons. Laws, 1909, ch. 26, sec. 54; *George v. Pierce* (1914, Sup. Ct.) 85 Misc. 105, 148 N. Y. Supp. 230. The law recognizing the jurisdiction of the peacemakers' court seems to be declaratory of an existing rule. See *Peters v. Tallchief* (1907) 121 App. Div. 309, 106 N. Y. Supp. 64. This court has been recognized recently by a federal court. *United States v. Seneca Indians* (1921, W. D. N. Y.) 274 Fed. 946, 949. It follows that the state court has only such jurisdiction over Indian affairs as is given by the statute. Since the jurisdiction of the state court is supplementary to that of the peacemakers' court, the allegation by the plaintiff that she resided "outside the territorial jurisdiction of the peacemakers' court" amounted to no more than an opinion that the state court had jurisdiction. In claiming a cause of action under an exception incorporated in the body of a statute, the plaintiff should have negatived the jurisdiction of the peacemakers' court. *Rowell v. Janvrin* (1896) 151 N. Y. 60, 66, 45 N. E. 398, 400.

MARTIAL LAW—EXTENT OF POWER OF GOVERNOR TO DECLARE ITS EXISTENCE.—The Governor of West Virginia proclaimed martial law in Mingo County. The petitioner was arrested for carrying a pistol contrary to orders in the Governor's proclamation, although he was duly licensed to do so by the civil authorities. At the time of the arrest there was no regular military force in Mingo County, but the Adjutant-General, holding a military commission, directed the civil authorities and the *posse comitatus*. The petitioner obtained a writ of habeas corpus. *Held*, that the writ should be sustained, as there was no regular military force in the territory covered by the proclamation. Miller, J., *dissenting*. *Ex parte Lavinder* (1921, W. Va.) 108 S. E. 428.

The governor of a state is the sole judge of conditions requiring a declaration of martial law. *Franks v. Smith* (1911) 142 Ky. 232, 134 S. W. 484; *In re McDonald* (1914) 49 Mont. 454, 143 Pac. 947. But the extent of this power is not settled. See Ballantine, *Unconstitutional Claims of Military Authority* (1915) 24 YALE LAW JOURNAL, 189; Lobb, *Civil Authority Verus Military* (1919) 4 VA. L. REG. 897. He may suspend the civil laws until the exigency is over. *In re Boyle* (1899) 6 Idaho, 609, 57 Pac. 706; *In re Moyer* (1905) 35 Colo. 159, 85 Pac. 190; *United States v. Wolters* (1920, S. D. Tex.) 268 Fed. 69. This is not a denial of due process under the Fourteenth Amendment. *Moyer v. Peabody* (1909) 212 U. S. 78, 29 Sup. Ct. 235. It is also held that the governor and those who act under his authority are not responsible civilly or criminally for acts done while martial law is in effect. *Hatfield v. Graham* (1914) 73 W. Va. 759, 81 S. E. 533; *In re Moyer, supra; Commonwealth v. Shortall* (1903) 206 Pa. 165, 55 Atl. 952. Some West Virginia cases have even held that persons may be arrested outside the zone of martial law and that they may be tried by a military commission, although the civil courts are still open. *Ex parte Jones* (1913) 71 W. Va. 567, 77 S. E. 1029; *State v. Brown* (1912) 71 W. Va. 519, 77 S. E. 243. But there are well-reasoned cases holding that the governor in declaring martial law acts merely as a civil officer of the state and that he must direct the military forces in accordance with the civil laws. *Franks v. Smith, supra; In re McDonald, supra;* cf. 2 Willoughby, *The Constitution* (1910) sec. 727. The decision in the instant case seems to indicate a tendency to depart from former West Virginia decisions. The restriction of the power to a time when a regular military force is in the field is desirable and it is hoped that it may aid in the ultimate adoption as general law of the able dissenting opinions in the extreme West Virginia cases. For proposed legislative reform see Ballantine, *Qualified Martial Law, A Legislative Proposal* (1915-1916) 14 MICH. L. REV. 102, 197.

PERSONS—RIGHT OF MOTHER TO RECOVER FOR DEATH OF ILLEGITIMATE CHILD.—An action was brought by the state on behalf of the mother of an illegitimate

child for the latter's death. A statute gave a right of action in cases of wrongful death for the benefit of husband, wife, parent, or child. *Held,* that the plaintiff could not recover. *State v. Hagerstown & Frederick Ry.* (1921, Md.) 114 Atl. 729.

The mother of an illegitimate child cannot recover for its death under wrongful death statutes. *Robinson v. Georgia Ry. & Banking Co.* (1903) 117 Ga. 168, 43 S. E. 452; *Lynch v. Knoop* (1907) 118 La. 611, 43 So. 252. The Court in the instant case, following the general rule, placed its decision on the ground that the statute was intended to cover only legitimate children. Md. Ann. Code Laws, 1911, art. 67. The jaded argument that the mother would be permitted to profit by her own wrong is also frequently urged to support such decisions. But Maryland has clothed illegitimate children with the attributes of legitimacy to the extent of allowing them to inherit and transmit inheritances. Md. Ann. Code Laws, 1911, art. 46, sec. 30. It is generally held that a mother is under duty to support her illegitimate child. *Galveston H. & S. Ry. v. Walker* (1907) 48 Tex. Civ. App. 52, 106 S. W. 705. The statute in the instant case was general and ought to have been construed in the light of the legislative purpose in enacting it. The conclusion of the court, that "child" *prima facie* means "legitimate child," was unjustified because the object of the statute was to provide compensation for the wrongful death of a dependent and in no way related to inheritance and kindred subjects where such a construction would be reasonable, if not compelling. The trend of the law, as well as the probable intent of the legislatures, is well illustrated by decisions and legislative enactments in South Carolina. In 1904, the Supreme Court refused to permit a mother to recover for the death of her illegitimate child. *McDonald v. Southern Ry.* (1904) 71 S. C. 352, 51 S. E. 138. In 1906, an act was passed stating that in the event of the death of an illegitimate child by wrongful act, the mother should have the same rights and remedies as though such child had been born in lawful wedlock. See S. C. Code, 1912, sec. 3562; *Croft v. Southern Cotton Oil Co.* (1909) 83 S. C. 232, 65 S. E. 216. The basis for the decision in the instant case seems rather narrow and specious, and entirely out of sympathy with the better view. See COMMENTS (1920) 30 YALE LAW JOURNAL, 167; *Andrzejewski v. Northwestern Fuel Co.* (1914) 158 Wis. 170, 148 N. W. 37; *Hadley v. City of Tallahassee* (1914) 67 Fla. 436, 65 So. 545; *Dickason Coal Co. v. Liddil* (1911) 49 Ind. App. 40, 94 N. E. 411.

PROPERTY—ESCHEAT TO STATE OF UNCLAIMED DEPOSITS IN NATIONAL BANK.—The amount of certain deposits in the defendant national banks was for more than twenty years unclaimed by the depositors or anyone succeeding to their rights. A California statute (Sts. 1915, chs. 84, 555) provided that if deposits in banks were unclaimed for twenty years their amount should escheat to the state. The defendants contended that the law was inapplicable to national banks as the state could not to this extent control their conduct, such control being solely within the jurisdiction of the Federal Government. *Held,* that the right of a depositor escheated to the state. *State v. Anglo & London Paris Nat. Bank* (1921, Calif.) 200 Pac. 612.

Statutes providing that deposits which had remained inactive and unclaimed in a savings bank for a certain number of years should be paid to the state authorities, subject to being repaid by the state to a person afterwards establishing a lawful right thereto, have been held constitutional as to the bank. But these statutes were not styled statutes of escheats, nor were the banks national banks. *Provident Inst. for Savings v. Malone* (1911) 221 U. S. 660, 31 Sup. Ct. 661, *in re* Mass. Laws, 1907, ch. 340, sec. 1; *Commonwealth v. Dollar Savings Bank* (1917) 259 Pa. 138, 102 Atl. 569, *in re* Pa. Laws, 1872,